

DOCUMENT RESUME

08151 - [C3498588]

[Determination of Nonresponsibility Not Reviewed]. E-193493.
December 12, 1978. 2 pp.

Decision re: Millard M. Braden; by Milton J. Socolar, General Counsel.

Contact: Office of the General Counsel: Procurement Law II.
Organization Concerned: Forest Service: Black Hills National
Forest, CO; Braden Forestry Services, Inc.

Authority: (P.L. 95-89; 91 Stat. 553; 15 U.S.C. 637(b)). F.P.R.
1-1.708. B-191183 (1978).

A company which was found to be nonresponsible because of defaults on prior contracts protested against award of certain items to any other bidder. The determination of nonresponsibility was not reviewed because the bidder did not take the opportunity to file for a certificate of competency from the Small Business Administration, the agency authorized to review such determinations. (HTW)

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

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FILE: B-193493

DATE:

December 12, 1978

MATTER OF: Millard M. Braden

DIGEST:

GAO will not review contracting officer's determination of nonresponsibility where small business bidder does not avail himself of opportunity to file for Certificate of Competency from Small Business Administration, since that would result in substitution of GAO for agency specifically authorized by statute to review determination.

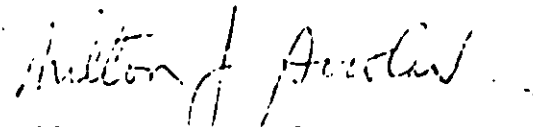
Millard M. Braden (Braden) protests the award to any bidder other than himself of items 1, 2 and 3 of invitation for bids (IFB) 03-78-106 and item 2 of IFB 03-78-99, issued by the Department of Agriculture, Forest Service, Region 2, Black Hills National Forest. Both solicitations were 100 percent small business set-asides.

It appears that Braden, bidding as an individual, had submitted the lowest bids for the above items but was determined to be nonresponsible by the contracting officer. The basis for the determination was that Braden Forestry Services, Inc. (Services) had defaulted on two prior contracts for work similar to the present procurement. Braden states that he is the president and majority stockholder of Services and we note that in discussing prior work for the Forest Service he does not distinguish between himself and the corporation.

The contracting officer as required by 15 § U.S.C. 637(b)(7) (1976), as amended by Pub. L. 95-89, § 501, 91 Stat. 553, and Federal Procurement Regulations § 1-1.703 (1964 ed. amend. 192), requested a Certificate of Competency (COC) from the Small Business Administration (SBA). SBA requested Braden to submit the required information which could enable it to determine whether a COC should be issued. Braden requested an extension of the 15 day time limit for filing the COC application. After the extension was granted, however, Braden failed to apply for the COC.

It has been the position of our Office that a small business which fails to file an acceptable COC application with the SBA does not avail itself of the possible relief provided by statute and regulation to afford small business concerns a degree of protection against unreasonable determinations as to their responsibility by contracting officers. In such circumstances, our Office will not undertake a review of a contracting officer's determination of nonresponsibility, since such action would, in effect, amount to a substitution of our Office for the agency specifically authorized by statute to review such decisions. Jet International, Inc., B-191183, February 14, 1978, 78-1 CPD 125.

Accordingly, the protest is dismissed.

A handwritten signature in dark ink, appearing to read "Milton J. Socolar", is written over a horizontal line.

Milton J. Socolar
General Counsel